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## Appeal Decision

Inquiry held on 8 August, 14 and 15 September 2017

Site visit made on 8 August 2017

**by David M H Rose BA (Hons) MRTPI**

**an Inspector appointed by the Secretary of State for Communities and Local Government**

**Decision date: 08 November 2017**

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**Appeal Ref: APP/R0660/W/17/3166469**

**White Moss, Butterson Lane, Barthomley, Crewe, CW1 5UJ**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
  - The appeal is made by Renew Land Developments Ltd against the decision of Cheshire East Council.
  - The application Reference 15/4888N, dated 26 October 2015, was refused by notice dated 15 December 2016.
  - The development proposed is an outline application for the provision of up to 400 residential units.
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### Decision

1. The appeal is dismissed.

### Preliminary matters

2. Following the adoption of the Cheshire East Local Plan Strategy (CELPS), on 27 July 2017, and in anticipation of the publication of the annual housing monitoring report 2016-2017, I agreed on the first sitting day to adjourn the inquiry for the preparation of up-dated evidence. The inquiry resumed on 14 September and sat for a further 2 days; written closing submissions followed a prescribed timetable; and the inquiry was closed in writing.
3. On resumption of the inquiry I was advised that a legal challenge had been made against the adoption of the CELPS by a party (unrelated to the current appeal) claiming that the Council had failed to take into account the issue regarding incorrect air quality data. The lodging of a challenge does not change the legal status of the plan.
4. Returning to the appeal proposal, a Planning Obligation by Deed of Agreement under section 106 of the Town and Country Planning Act 1990 (the s106) would secure:- the submission of a phasing plan for the site; the provision of affordable housing; on-site open space; a lowland raised bog restoration scheme; highways provisions; and education contributions. The parties agree that the obligations are necessary to make the development acceptable in planning terms; and they are directly related, and fairly and reasonably related in scale and kind, to the development. The Council has also confirmed that none of the contributions would exceed the pooling restrictions set out in The Community Infrastructure Levy Regulations 2010 (as amended). I find no reason to disagree.

5. In the course of negotiating the s106 the site plan was amended to reflect ownership titles and site plan 1825-106C forms the basis on which the proposal is to be decided.
6. Five reasons for refusing the planning application were originally cited including:- the location of the site within the open countryside; prematurity/ compromise to the emerging Spatial Vision for the Borough; and insufficient information relating to ecological benefits, biodiversity and highways.
7. An ecology statement of common ground confirms, following amendments to the site layout, provision would be made for the appropriate retention and enhancement of Willow Tit habitat and the restoration of retained peat reserves to re-create lowland raised bog habitats; and, based on an alternative surface water management plan, the proposal would not have an unacceptable impact on Oakhanger Moss SSSI and Midland Meres and Mosses Phase 2 Ramsar and local Sites of Biological Importance. A further statement of common ground, highways and transportation, confirms the resolution of related matters. On this basis, the Council no longer pursues reasons for refusal 3, 4 and 5 and I do not address them further.
8. A general statement of common ground confirms a number of topics which are not at issue including:- amenity; noise; air quality; contaminated land; flood risk and drainage; and economic sustainability. It is agreed that the appeal site is located in the open countryside and the proposal would not fall within any of the exceptions permitted by the development plan. Relevant policies are set out with dispute restricted to the weight to be given to CELPS Policies PG 2, PG 6 and PG 7 and saved Policy RES.5 in the Crewe and Nantwich Replacement Local Plan 2011 (C&NRLP).
9. Additionally, a statement of common ground on housing land supply ratifies the base date for assessment; the relevant 5-year period; the base annual requirement (x5); the accumulated backlog; the backlog to be addressed over an 8-year period ('Sedgepool 8') as endorsed by the Inspector examining the CELPS (the examining Inspector); and the application of a 20% buffer. It is the extent of the deliverable supply which is in dispute with the Council claiming 5.45 years<sup>1</sup> compared with the appellant's contention of 4.65 years.
10. The Council also confirms, in light of the adoption of the CELPS, that the allegation of prematurity in reason for refusal 2 is withdrawn.

### **Main issues**

11. The main issues, in light of the recent adoption of the CELPS, are:-
  - (a) can the Council demonstrate a realistic and deliverable 5-year supply of housing land based on the Housing Monitoring Update (August 2017 – Base date 31 March 2017) having particular regard to the methodology used to forecast supply and the predicted delivery of selected sites;
  - (b) if the Council is unable to show a 5-year supply of deliverable housing sites, what measures and timescale would be available to address the situation;

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<sup>1</sup> Reduced to 5.42 years following concessions made during the housing supply round table discussion

- (c) the implications of the proposed development for the settlement hierarchy, spatial distribution of development and the protection of the open countryside in light of Policies PG 2, PG 6 and PG 7 of the CELPS and saved Policy RES.5 in the C&NRLP;
- (d) the extent to which the proposal might contribute to 5-year supply and the weight to be attached; and
- (e) the overall planning balance in light of whether or not relevant policies for the supply of housing are up-to-date.

## **Reasons**

### **Issue (a): housing land supply**

12. The examining Inspector, in endorsing the Council's assessment of the delivery of its housing land supply, acknowledged that much detailed work had been undertaken in assessing the deliverability of strategic sites and confirmed that he saw no fundamental constraints which would delay, defer or prevent the implementation of the overall housing strategy with its mechanism of meeting past under-delivery within an 8-year period.<sup>2</sup>
13. However, the evidence base, since the examination and adoption of the plan, has advanced by a year as a result of the recently published Housing Monitoring Update referred to above. In effect, this provides a basis for gauging whether or not committed and proposed housing sites have come, or are coming, forward in line with the anticipated timescale and housing trajectory on which the examining Inspector based his conclusions. The differences between the parties are twofold in terms of an 'in principle' matter of methodology and the 'performance' of a number of specific sites.
14. In terms of the 'in principle' matter, the Council relies on its long-term work of appraising thousands of sites over a period of some 10 years, whereas the appellant provides a more immediate 'snapshot' with very different conclusions. Although it might be anticipated that greater credibility could be given to the Council's stance, in light of its more extensive analysis and endorsement by the examining Inspector, the absence of any formally published data, and ability for transparent analysis, is a fundamental drawback. Nonetheless, the appellant's assessment, whilst claiming to represent the situation in East Cheshire now, needs further critical consideration as set out below.
15. Looking first at the lead-in times for strategic sites, the Council relies on an average period of 2.5 years based on past performance. The counter evidence of the appellant of some 4 years for strategic site commitments (at 31 March 2017) shows a rounded average of 3 years in the planning system; and a further period of 13 months (ranging from 5 months to 21 months) before the first completion of homes on sites with more than 150 dwellings. The submission of a full application, without a preceding outline application, lies some 18 months in the planning process and a subsequent period of 14 months before the first completion of new homes.

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<sup>2</sup> Inspector's report paragraphs 68 - 70

16. Lead-in times are likely to be influenced by a number of factors, including the efficiency of the Council's development management function; negotiations on planning obligations; the marketing and sale of non-developer owned sites; the preparation of reserved matters applications; the discharge of pre-commencement conditions; and developers' building and marketing programmes. The site-by-site and stage-by-stage evidence provided by the appellant was effectively unchallenged other than by the qualification of it being of limited value due to its assessment at a single point in time.
17. That proviso may have some merit if the deviation from the long-term average could be explained by particular unusual circumstances. Without that, and given the manner on which the CELPS relies on the wider view of delivery, it is incumbent to assess whether the assumptions behind the plan are currently materialising as anticipated by the examining Inspector. To my mind, the up-to-date evidence showing the current performance of major development sites seriously undermines the much wider historic view promulgated by the Council.
18. Any deviation in lead-in times is likely to have potential consequences for the housing trajectory. The basis of the CELPS is to fully meet past under-delivery of housing within a period of 8 years which, according to the examining Inspector, would require some 2,940 dwellings/year (including buffer) over the next 5 years. He noted that this would be ambitious, but realistic and deliverable, as well as boosting housing supply without needing further site allocations.<sup>3</sup>
19. The related housing trajectory showed significantly increased rates of housing completions between 2016/17-2024/25, ranging from 2,000 - 3,500+ dwellings/year. The Inspector confirmed that this would provide a realistic, deliverable and effective supply of housing land, to fully meet the objectively assessed housing requirement, with enough flexibility to ensure that the housing strategy is successfully implemented.<sup>4</sup>
20. In terms of the housing trajectory, the Council confirmed that Sedgemoor 8 would run from March 2017, rather than March 2016, effectively amounting to a 9-year period for dealing with under-delivery. Even then, the accumulated figure was agreed to be 'not unsubstantial' and to my mind a considerable task lies ahead in accelerating the delivery of the new homes needed across the Borough.
21. Further illustration can be gained from analysis of delivery from the base-date of the CELPS (2010/11) and the failure to achieve the objectively assessed need of 1,800 dwellings/year in any annual monitoring period. In this regard, completions in the first 4-year period to 2013/14 fell considerably short and, even with a steady increase thereafter, each successive year failed to attain the requirement.<sup>5</sup> This amounts to a deficit of 5,365 dwellings since 1 April 2010.<sup>6</sup>

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<sup>3</sup> Inspector's report paragraph 72

<sup>4</sup> Inspector's report paragraphs 75 & 76

<sup>5</sup> Completions from 2010/11 – 2016/17:- (659);(778);(614);(713);(1,236);(1,473);(1,762)

<sup>6</sup> Housing Monitoring Update August 2017 – Table 3.1

22. The delivery of 1,762 dwellings in 2016/17 has to be set against the 2016 trajectory and its anticipation of 2,955 units. The more recent trajectory is also materially different from its predecessor in that delivery for 2017/18 is predicted to be 3,373 (rather than 2,549); with a lower figure of 3,032 (3,501) in 2019/20. The anticipated completions for 2017/18 look particularly challenging as they would be almost double the earlier year.
23. Whilst much criticism was made of the Council's predictive ability, housing trajectories are fickle by nature, subject to external influences and they cannot be expected to foretell with precision. Nonetheless, deviation from the trajectory demands analysis with a view to assessing the degree and nature of any intervention required to ensure that housing delivery remains on track. Indeed, the examining Inspector confirmed that much will depend on whether the committed and proposed housing sites come forward in line with the anticipated timescale and amended housing trajectory.
24. Although the assumed delivery rates have already failed, it is important to seek to understand the underlying causes and to identify what remedial steps might be required. In this regard, the delays in completing the examination of the CELPS and the trigger of adoption for releasing sites for housing development may well have had a considerable inhibiting influence. The existence of a recently adopted plan, and the certainty which that provides in identifying strategic sites and strategic locations in particular, should afford the impetus for boosting the supply of housing consistent with the thrust of the National Planning Policy Framework (the Framework).
25. The fact that delivery has been constrained and sluggish is but one side of the overall equation. In this regard, the CELPS allocates almost 1,000 hectares of land (excluding 3 Strategic Locations) for housing development; and, at July 2017, committed sites amounted to over 1,360 hectares.<sup>7</sup> Some 18,555 homes have been earmarked for the Strategic Sites and Locations; 8,904 of these have planning permission; and 5 sites were under construction at 31 March 2017.
26. It can also be seen that the level of commitments has increased over the last year by 3,157 units (19%) and over 20,000 units have the benefit of planning permission or a resolution to grant planning permission.<sup>8</sup> In combination, there is a substantial source of supply in a choice of locations, although sites with a resolution to grant must be treated with some circumspection given the evidence on known delays in concluding planning obligations and/or discharging pre-commencement conditions.
27. In terms of delivery, in 2017/18 the prediction of 3,373 units is supported by a forecasting schedule of committed sites with the anticipation that performance below trajectory in 2016/17 will be compensated by some completions moving back into the succeeding year rather than being lost from supply. Although, DCLG<sup>9</sup> data for the first quarter of 2017/18 indicates 380 completions (1,520 annualised), evidence provided by the Council demonstrates that the 'live tables' can result in under-recording.<sup>10</sup> Nonetheless, the Council's calculations rest or fall on its methodology as debated above and further assumptions about build-rates and deliverability ('performance') discussed below.

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<sup>7</sup> Including sites with homes already constructed but excluding completed sites

<sup>8</sup> Housing Monitoring Update August 2017 – Table 4.1

<sup>9</sup> Department for Communities and Local Government

<sup>10</sup> Sophie Williams Appendix 9

28. These can be best assessed by reference to the table of disputed sites provided by the parties and whether or not the Council's revised assessment of 16,057 deliverable units (a 5.42 year housing land supply) is robust. The loss of 1,233 units from the schedule would reduce supply to 5 years.
29. Starting with land off Dunwoody Way, Crewe (ref 1934), the absence of ongoing development since December 2013, and any perceived real intentions, indicate a stalled site and 29 units should be deducted.
30. Delivery of the Chelford Cattle Market site (ref 3175) is reliant on intended purchase by a national house-builder in February 2018. The expectation of first occupations a year later is unrealistic given the need to seek planning permission and to commence development. Even if one were to assume an immediate submission of a full application for planning permission, a minimal period for its determination, the average lead-in time thereafter and the proffered build-rates, probability suggests that delivery would be unlikely to begin much before 2020/21 resulting in a shortfall of some 26 units.
31. Elmbank House, Sandbach (ref 5899) has an improbable trajectory in view of the site specific circumstances. The appellant's predicted loss of 13 units is more robust.
32. Land off Church Lane, Wistaston (ref 5672) has outline planning permission. If an application for the approval of reserved matters were to be positively determined by April 2018 (assuming speedy resolution), the earliest anticipation of completions would be at least a year later resulting in a conservative loss of 15 units and potentially 30 units.
33. In relation to land south of Old Mill Road, Sandbach (ref 2612), the parties disagree by a matter of 6 months and there is no clear resolution either way from the information before me. The site is either deliverable as predicted by the Council or at worst 15 units might be lost.
34. The Council's assumption of half-year delivery in 2018/19 for land off London Road, Holmes Chapel (ref 5709) appears unlikely given the need to resolve a floorspace issue through a section 73 application and thereafter to obtain reserved matters approval and to commence development. A delay of 12 months appears entirely predictable, thus removing 30 units from the 5-year supply.
35. The completion of units in the second half of 2018/19 on land off Abbey Road, Sandbach (ref 4725), given the absence of house-builder involvement and the need for reserved matters approval, suggests that output from this site would be some 6 – 12 months later than envisaged with a deduction of 15 – 30 units.
36. Victoria Mills, Holmes Chapel (ref 406) is a working employment site requiring relocation of a substantial employer and, despite measures to keep the outline permission alive, there is no evidence of realistic progress to suggest that houses could be completed in the second half of 2018/19. Indeed, there is scant indication of the site being available now for housing development and, despite the appellant's inclusion of 15 units from 2021/22, I consider that the site, and its 105 anticipated dwellings, should be removed.



37. The redevelopment of The Kings School, Macclesfield (ref 4302) is dependent on the relocation of the school to a new site, with some uncertainty around the date on which this would be achieved. With an understandable preference for transfer between school years, vacation of the site by September 2020 appears more likely than the original best case of January 2019 given that work on the new school did not commence at the earliest date anticipated. Even with planning permissions in place and the involvement of the Homes and Communities Agency, the delivery of new homes before 2021/22 would be unlikely. This would amount to a loss of an additional 15 units over and above the local planning authority's concession. Land east of Fence Avenue, (ref LPS14) is similarly constrained with a further debit of 15 units.
38. Land to the north of Moorfields, Willaston (ref 2896), with outline planning permission, a reserved matters application pending and an identified developer, could start to deliver from the Autumn of 2018 albeit any slippage would suggest delivery from 2019/20 in which case 15 units might be lost.
39. Land off East Avenue, Weston (ref 4572), without a reserved matters submission, has an unlikely prospect of completions from the second period of 2018/19 and a later start would result in the loss of 10 – 25 units depending on the timing of any reserved matters application.
40. Danebridge Mill, Congleton (ref 4849) has a capacity of 14 units. Although the outline planning permission has expired, it was extant at the base date for the Monitoring Update and its inclusion is appropriate.
41. Moving on to the Strategic Sites, Leighton, Crewe (ref LPS5) was the subject of a resolution to grant outline planning permission in February 2017; the s106 has not been signed; and there is no identified developer. On this basis, the prospect of delivery in 2019/20 is unclear which would justify a loss of 30 units. In addition, whilst it might be anticipated that a site with some 500 homes would have 2 outlets, whether or not this would materialise from the outset is far from certain. This could result in the deduction of a further 40 units.
42. Phase 1 Basford East, Crewe (ref LPS2), a site of 490 dwellings, is yet to be sold although it is said that an application for reserved matters is to be expected and the owner is confident of development from 2019/20. Given the uncertainties, a degree of caution is required which would result in the loss of 15 units. Again, whilst 2 developers might be anticipated, the current doubt indicates the removal of a further 20 units.
43. Phase 2 of the above is currently hindered by a safeguarding objection in relation to HS3 and access to the site. However, the Council appears to have been cautious, based on the information available to the authority, in its anticipation of development from 2020/21. No deduction is warranted.
44. Parkgate Industrial Estate, Knutsford (ref LPS37) is located within a high value market area with pent up demand. Despite the landowner's stated commitment to bring forward the site, and the grant of outline planning permission in June 2015, no apparent progress has been made in its disposal to a developer. Without convincing evidence, a standard build rate of 30 dwellings/year should be assumed; and the likelihood of a full year of completions from 2019/20 appears dubious. This would result in the loss of 60 units, which might be reduced to 45 if imminent progress were to be made on disposal and the submission of reserved matters.

45. Glebe Farm, Middlewich (ref CS20) has a lengthy history with a resolution to grant outline planning permission in April 2014; the s106 has not been concluded; and substantial monies are required towards the Middlewich Eastern Bypass. With the level of uncertainty, it would be prudent to anticipate 15 dwellings in 2020/21 rather than 30; and for a site with potential for 450 units it would not be unreasonable to expect the prospect of 2 outlets from the relatively distant horizon of 2021/22.
46. Leighton West, Crewe (ref LPS4) has been the subject of pre-application discussions with 2 house-builders. The anticipation of an outline application in September 2017 looks unlikely with scoping requests outstanding. The Council's expectation of completed homes from 2019/20 appears unduly hopeful and at the very best 2020/21 might be achievable. Even then, it has to be acknowledged that this might be optimistic applying the appellant's lead in times. Given dual interest, and the lengthy time horizon, it would not be unreasonable to expect 2 outlets from the point of commencement. This would result in the loss of 35 units at best and 105 at worst. In terms of the 25 units allocated on that part of the site controlled by Engine of the North, without compelling evidence to the contrary, it would not be unrealistic to expect a modest number of dwellings in 2021/22.
47. Crewe Green (ref LPS6) has not progressed as predicted and the first step will be the anticipated imminent determination of an application for a new roundabout, followed by a full application for residential development. Even if details are approved in the summer of 2018, first completions would not occur until at least a year later resulting in the deduction of 20 dwellings (based on 40 units/year); and, if the determination of the application is no better than the appellant's average, a further 20 would be lost. There is nothing to support or gainsay the Council's assessment of 40 units, rather than 30 units/year, as the authority has had the advantage of pre-application discussions with a known developer.
48. South Cheshire Growth Village, Crewe (ref LPS8) does not have planning permission; no apparent steps have been taken to promote and progress the site; and the Council has failed to illicit response from the landowner/promoter. The expectation of full delivery from 2 outlets in 2020/21 seems highly speculative and a more prudent approach would anticipate completions from the following year onwards, with a loss of 80 units. Two outlets at that stage would not appear unreasonable.
49. The remainder of Shavington/Wybunbury Triangle (ref LPS9) is a remnant of a larger site currently delivering houses. It has potential for up to 36 units and there is nothing to show that it would be incapable of delivery towards the end of the 5-year period.
50. Broughton Road, Crewe (ref LPS11) is one of 3 fields allocated for development with the other 2 under construction. Anticipation of development towards the end of the 5-year period would not be unrealistic.
51. Whilst South Macclesfield Development Area (ref LPS13) has a long history of inactivity, a resolution to grant planning permission was made in August 2017 for a mixed use project including up to 950 dwellings. The s106 awaits signature; and the site is not without complexities of remediation, stabilisation and dewatering. Moreover, without identified developers, delivery in 2019/20 seems a remote possibility and it would be preferable to assume, at best, delivery from 2021/22 with a loss of 120 – 180 units.



52. Gaw End Lane, Macclesfield (ref LPS17) is a site which was released from the Green Belt on adoption of the CELPS. A major house-builder anticipates the submission of a planning application towards the end of 2017 with delivery expected soon thereafter. Although the Council estimates delivery from the second half of 2019/20, such a timescale is likely to be unduly tight with 2020/21 a more likely prospect with the loss of 15 dwellings. The expectation of 50 units per annum, based on the developer's track record, is not an unreasonable proposition.
53. The development of Congleton Business Park Extension and Giantswood Lane to Manchester Road (refs LPS27 and LPS29) is dependent on the construction of the Congleton Link Road with anticipated completion by mid-2020. Whilst house-building might begin in advance of the opening of the road, it would be more realistic to expect completions from 2021/22 resulting in the loss of 110 and 50 dwellings respectively.
54. Giantswood Lane South, Congleton (ref LPS28) is an adjunct to an active site and delivery of 45 units could take place by the end of the 5-year period.
55. North Cheshire Growth Village (ref LPS33) is allocated for 1,500 units. The timescale envisages the adoption of a Masterplan/SPD by early 2018; the submission of a planning application soon thereafter; and a start on site and primary infrastructure in spring 2019. At the very best, completions could not be expected before 2020/21, as forecasted by the Council, but the prospect of 4 outlets delivering 150 units/year from the outset appears highly optimistic. It would be prudent to discount a minimum of 100 units.
56. Land north of Northwich Road and land west of Manchester Road, Knutsford (ref LPS36) is an allocated site (3 separate parcels) awaiting permission and market disposal. Although the site lends itself to multiple outlets, completions in 2019/20 would be overly ambitious with a more realistic prospect of delivery 6 – 12 months later justifying the removal of 45 – 80 units.
57. Land south of Longridge (ref LPS38) is expected to deliver from 2019/20. The submission of a planning application relies on the sale of Council owned land with a decision expected in October 2017 and, at best, a lead in time of 2 years. A modest deduction of 15 dwellings would be warranted.
58. Brooks Lane, Middlewich (ref LPS43) was the subject of an undetermined planning application including 137 dwellings at the time of the CELPS examination. The application was refused recently and progress now appears to depend on the preparation of a Masterplan (anticipated early 2018) and the submission of a further application. Delivery in the second half of 2020/21 cannot be confidently assumed and slippage by 12 months would seem prudent amounting to the loss of 30 units.
59. Finally, it is anticipated that a full application will be made for up to 150 homes at Heathfield Farm, Wilmslow (ref LPS57) and 2 developers have already commenced preliminary marketing. Nonetheless, the prospect of initial delivery in 2018/19 looks unduly challenging and the probability is commencement 6 – 12 months later, resulting in the loss of 15 – 30 units.
60. From the foregoing, it is apparent that a significant number of dwellings included in the Council's 5-year supply are at risk of failing to materialise within the timeframe identified, amounting to some 1033 – 1363 dwellings as set out in the following table:-

Site Ref	Loss	Site Ref	Loss	Site Ref	Loss
1934	29	LPS14	15	LPS8	80
3175	26	2896	0-15	LPS13	120-180
5899	13	4572	10-25	LPS17	15
5672	15-30	LPS5	30-70	LPS27/29	160
2612	0-15	LPS2	35	LPS33	100
5709	30	LPS37	45-60	LPS36	45-80
4725	15-30	CS20	15	LPS38	15
406	105	LPS4	35-105	LPS43	30
4302	15	LPS6	20-40	LPS57	15-30
<b>Sub Totals</b>	<b>248-293</b>		<b>205-380</b>		<b>580-690</b>
<b>Total</b>					<b>1033-1363</b>

61. This would, at best, provide the Council with headroom of 200 units; and a supply of 5.07 years.<sup>11</sup> At worst, there would be a deficit of 130 dwellings and a supply of 4.96 years.<sup>12</sup> To my mind, even though the calculated supply includes a 20% buffer, the 5-year supply should be considered to be marginal and, potentially, in doubt.
62. Therefore, on the basis of the fact specific evidence before me, and the illustrated risk of available housing supply falling slightly below the 5-year requirement, I cannot determine with confidence that a marginal best case excess amounts to a sufficiently robust supply of specific deliverable sites. Given the importance of the 5-year baseline, and the aim to significantly boost the supply of housing, I conclude that it would be both cautious and prudent in the circumstances of this case to regard policies for the supply of housing to be considered not up-to-date, thus engaging the tilted balance of paragraph 14 of the Framework.

**Issue (b): measures to address any shortfall**

63. The examining Inspector rejected the notion of allocating additional sites or identifying reserve sites as a measure of providing increased flexibility in housing provision; and indicated that further sites may come forward in the Sites Allocations and Development Policies Development Plan Document (SADPPDP) and future neighbourhood plans.<sup>13</sup> These would be medium term measures to address any shortfall.
64. The CELPS sets out arrangements for the production of an annual Authority Monitoring Report with measurable indicators and consideration of appropriate action, including a review or partial review of the Local Plan Strategy.<sup>14</sup> This should be regarded as medium to long-term measure.

**Issue (c): settlement hierarchy, spatial distribution of development and the protection of the open countryside**

65. Starting with the development plan, Policy PG 2 of the CELPS establishes a hierarchy of settlements. The appeal site is located in 'Other Settlements and Rural Areas'. The plan explains:- *'In Local Service Centres and other settlements and rural areas, the Local Plan Strategy approach is to support an appropriate level of small scale development that reflects the function and character of individual villages. Small scale growth may be appropriate where it supports the creation of stronger local communities and where a clear need exists, which is not*

<sup>11</sup>  $16,151 - 94 - 1033 = 15024 \div 2965 = 5.07$

<sup>12</sup>  $16,151 - 94 - 1363 = 14694 \div 2965 = 4.96$

<sup>13</sup> Inspector's report paragraph 74

<sup>14</sup> CELPS Chapter 16

*more appropriately met in a larger nearby settlement. Development will be restricted to locations well related to the built-up extent of these settlements. The identification of such sites will [sic] achieved through the allocation of suitable sites and/or the designation of settlement boundaries addressed as part of the Site Allocations and Development Policies Development Plan Document and/or Neighbourhood Plans where these come forward'.*

66. Alsager is a 'Key Service Centre':- *'Locating the majority of new development needs in, on the edge of, or close to the borough's Principal Towns and Key Service Centres will enable the maximum use of existing infrastructure and resources and allow homes, jobs and other facilities to be located close to each other .....'*
67. In turn, Policy PG 6 defines 'Open Countryside' as the area outside any settlement with a defined settlement boundary. In common with C&NRLP saved Policy RES.5, development is to be restricted other than in defined circumstances, none of which apply to the appeal proposal. The CELPS confirms that settlement boundaries are defined in saved policies of the constituent former authorities now comprising Cheshire East and these will remain, generally, unchanged until detailed boundaries are established in plans yet to be prepared.
68. The spatial distribution of development is set out in Policy PG 7 with some 40 hectares of employment land and 2,000 new homes attributed to Alsager. The Other Settlements and Rural Areas are set to accommodate about 69 hectares of employment land (including 61 hectares at Wardle) and 2,950 new homes (including 200-300 new dwellings at Alderley Park).
69. In accordance with s38(6) of the Planning and Compulsory Purchase Act 2004, the appeal must be determined in accordance with the development plan unless material considerations indicate otherwise. In this regard, historic settlement boundaries have been carried forward into the CELPS other than where modifications have been made to incorporate strategic allocations. It is common ground that settlement boundaries will need to be comprehensively reviewed as part of the SADPPDP.
70. Holding the view that the thrust of Policies PG 6 and RES.5 is consistent with the Framework's recognition of the intrinsic character and beauty of the countryside, the inescapable fact remains that considerable development has been sanctioned outside settlement frameworks. Although the adoption of the CELPS gives some support and rationale for the current lacuna, and a process for review and updating, the situation is largely 'make-do and mend'.
71. Whilst this has provided a workable solution of notional development limits, with the anticipation that recently allocated sites adjoining historic settlement boundaries will ultimately be embraced by an extended edge and some built-up areas might be the subject of expansion as part of the SADPPDP, the established settlement frameworks are, in practice, generally out of date.
72. This conclusion takes on greater materiality in circumstances where the local planning authority is unable to demonstrate a robust 5-year housing land supply insofar as the weight to be attributed to the settlement boundaries, and any infringement of them, diminishes.

73. In terms of the weight to be attached to the breach of the settlement boundary, it is claimed that the proposal would be an obvious extension to Alsager, in that it adjoins Phase One of White Moss Quarry which is allocated for residential development (ref LPS 20) as an adjunct to the town, consistent with the role of Alsager as a Key Service Centre. However, that might be said of any greenfield site on the edge of the settlement either as it currently exists or as proposed to be enlarged.
74. In addition, whilst it is contended that the only reason why the appeal site was not allocated for development was because it was not needed, the words of the examining Inspector in relation to this 'omission' were that it was '*..... not necessary or appropriate at this stage*', in the context of it being over and above the housing allocations promoted by the Council.<sup>15</sup>
75. It is evident that the appeal site, as a working quarry, would only take on the character and amenity of open countryside following its restoration. Although no landscape harm is alleged, which is a factor of some considerable importance, the proposal would remain in conflict with the development plan and with one of the Framework's core planning principles that '*planning should be genuinely plan led ..... they [plans] should provide a practical framework within which decisions on planning applications can be made with a high degree of predictability and efficiency*'.
76. Moving on to the spatial vision, the examining Inspector endorsed the spatial distribution of development:- '*..... [it] represents a realistic, rational and soundly-based starting point ..... it is justified by a proportionate evidence base ..... it is also based on sound technical and professional judgements and a balancing exercise, which reflects a comprehensive and coherent understanding of the characteristics, development needs, opportunities and constraints of each settlement ..... I conclude that the Spatial Distribution of Development and Growth ..... is appropriate, effective, sustainable, justified with robust evidence and soundly based, and fully reflects the overall strategy for the Plan*'.<sup>16</sup>
77. Whilst the proposal would entail a substantial increase in the number of homes to be built on the edge of Alsager, there is nothing to suggest that such an increase could not be accommodated in principle and that potentially adverse effects on local services and infrastructure could not be mitigated through the s106.
78. In addition, although the proposal would absorb a significant slice of the development to be shared across the Other Settlements and Rural Areas, accounting for 400 of only some 617 dwellings to be allocated in the remainder of the plan period, it would not necessarily deny development elsewhere as the identified figure of 2,950 homes is not intended to act as a ceiling. Furthermore, Alsager itself is recognised to be a sustainable location for development with access to a variety of services, facilities and public transport consistent with its role.
79. The effect of adding up to 400 additional houses to a modest sized settlement, where Policy PG 7 anticipates around 40 hectares of employment land and 2,000 new dwellings (of which only 13 remain to be identified), could lead to an imbalance between housing and employment provision; and that imbalance could lead to increased, unsustainable, out-commuting. Whilst the proposition may be credible, no demonstrable evidence was put before me to support and justify such a stance.

<sup>15</sup> Inspector's report paragraph 202

<sup>16</sup> Inspector's report paragraphs 83 and 92

80. Nonetheless, it is worthy of note that the examining Inspector found the Council's Spatial Distribution Report to be *'..... the only evidence that comprehensively addresses all the relevant factors relating to a soundly-based spatial distribution of development .....'*<sup>17</sup>

**Issue (d): the contribution of the appeal proposal to 5-year supply**

81. The appellant has an agreement with Persimmon, in association with Anwyl, for the development of the Phase One White Moss Quarry land and the appeal site. In addition, the capacity of the Phase One infrastructure has been specified to accommodate the intended second phase. The aim is for Phase Two to deliver up to 100 dwellings in the 5-year period with the potential outlets of Charles Church (Persimmon's executive brand) and Anwyl. It is said that certainty could be provided by imposing conditions on any planning permission to secure the submission of reserved matters within a period of 12 months; and commencement no later than 6 months following the final approval of reserved matters, or by 1 April 2019, whichever is the later.
82. In terms of the logistics of achieving this, with an outline planning permission effective from the date of this decision, 12 months 'grace' for the submission of reserved matters would run until autumn 2018; and, even with timely approval, it would be difficult to envisage commencement on site by spring 2019 which would be the latest prerequisite date if Charles Church is to deliver 25 units in each of the 3 years from 2019/20 and Anwyl is to deliver 25 units in 2021/22 as forecast. Nonetheless, it is acknowledged that any shorter period for the preparation and submission of reserved matters would provide some latitude.
83. It is also relevant to note that the appeal site would need to be restored in accordance with a scheme, either as part of the reserved matters application, or through a separate application, yet to be submitted and approved; and infrastructure within Phase One would have to be programmed to allow commencement of Phase Two in accordance with the stated timescales.
84. Moreover, without any realistic expectation of Phase One being built-out within a period of 5 years, the likelihood would be that both Phase One and Phase Two would proceed in tandem from 2019 if the latter is to make the intended contribution of 100 units. However, no express commitment has been given to the reality and timing of 2 sales outlets; and the extent to which a common presence, albeit with Persimmon operating under a different marque, might result in inhibiting competition is unclear.
85. Even if I were to accept the reality of delivering the proffered 100 new dwellings, and the inclusion of much needed affordable housing, as a contribution to 5-year supply, the benefit would be offset by the consequential commitment of up to a further 300 dwellings in a location at odds with the settlement hierarchy and spatial distribution of development set out in the CELPS.

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<sup>17</sup> Inspector's report paragraph 84



**Issue (e): the overall planning balance**

86. Starting with the development plan, despite the legal challenge, the appellant has not sought to refute the presumption of regularity. Although the challenge is a material consideration, it is a factor of very little weight at the most at the present time.
87. The Framework sets out the importance of local planning authorities being able to demonstrate a 5-year supply of specific deliverable housing sites. Whilst much analysis has underpinned the recent adoption of the CELPS, and its affirmed supply of 5.3 years, the base data has now rolled forward by a year with the publication of the Housing Monitoring Update 2017.
88. The assessment of a 5-year supply is by no means an exact science and it requires forethought and professional judgement. The local planning authority has the benefit of long-term statistical data, extensive local knowledge and regular dialogue with landowners and/or developers. However, the exercise undertaken by the appellant, although considerably more limited in scope, calls into question some of the assumptions made by the Council sufficient to warrant examination of the likely future prospects of a number of identified sites.
89. Moreover, detailed analysis, of those sites on which the parties disagree, confirms a degree of over-optimism on the Council's part and raises doubt about the robustness of its 5-year supply. In this regard, delivery has continued to lag and considerable improvements will be required to achieve the necessary number of completions. Nonetheless, the adoption of the CELPS has seen the release and confirmation of sites for development; and there has been a notable increase in the number of new homes with planning permission or with a resolution to approve.
90. Overall, the question mark hanging over the 5-year supply has to be seen in this wider context and, on the basis of the appellant's one-year exercise, it is too early to assess whether or not the assumptions on which the CELPS is based are robust. Nonetheless, it would be prudent on the fact specific circumstances of this case to consider relevant policies for the supply of housing to be on the cusp of being considered not up-to-date and, as a precaution, to apply the tilted balance of paragraph 14 of the Framework.
91. Although the CELPS does not have any immediate compensatory mechanism for under-delivery, the plan, in common with good practice, sets out monitoring mechanisms with the intention of any necessary remedial steps being undertaken through the plan making process. Nonetheless, these are only likely to be effective in the medium to longer term and would not offer early remedy to any notable shortfall.
92. In terms of the relevant development plan policies, in the absence of a 5-year supply, existing, generally long-established and dated settlement boundaries, albeit sanctioned by the CELPS pending review, should be considered to be out of date. On this basis, limited weight applies to the identified conflict with CELPS Policy PG 6 and C&NRLP Policy RES.5.
93. Despite the proximity of the appeal site to the existing and likely future settlement boundary of Alsager, the proposal would be in conflict with CELPS Policy PG 2 and its defined hierarchy of settlements. Although it is not



alleged that the proposal would cause harm to the character and appearance of the countryside, there would, nonetheless, be a fundamental policy objection in that it is intended that development in Other Settlements and Rural Areas should be small in scale. The policy is consistent with the Framework's intention that planning should be genuinely plan led and that planning should take account of the different roles and character of different areas. I give substantial weight to the conflict with this policy.

94. Policy PG 7 sets out a spatial distribution for new development, with indicative levels of new housing and employment. Although the local planning authority could not identify any tangible harm arising from the proposal, the erection of up to 400 additional homes in this location would run counter to the comprehensively examined, and the unequivocally endorsed, future development needs and opportunities in the smaller settlements and rural areas across the Borough. Again I find consistency with the Framework and I attribute substantial weight to the conflict identified.
95. The benefits of the proposal would flow from any contribution that it would make to the 5-year housing land supply. Even if the delivery of 100 homes were to take place as predicted towards the end of the relevant period, the contribution would be nominal and a factor of very little weight. Moreover, the potential provision would be tainted by an excess, beyond the immediate 5-year period, of up to 300 dwellings in conflict with the settlement hierarchy and spatial distribution of development set out in the CELPS. On this basis, I consider that the overall weight to be given would therefore be very small, especially in light of the marginality of any forecast in shortfall and the inevitable and unavoidable inexact nature of the forecasting process.
96. Although the proposal would not provide affordable housing above that required by policy, or above the level expected on other sites, such provision would be a tangible benefit against identified need. There is no suggestion that the contribution, if lost, would be made up from other development, and I find this benefit merits significant weight.
97. The proposal would also lead to some economic benefits in terms of employment and increased local spending. Whilst this could not be quantified, it is nonetheless a factor of moderate weight.
98. In the final balance, the conflict with Policies PG 2 and PG 7 of the recently adopted CELPS, and also with Policies PG 6 and RES.5, as described above, provides the totality of the planning harm. Paragraph 14 of the Framework indicates that where relevant policies in the development plan are out of date, in this case arising from the marginality of a sufficiently convincing 5-year housing land supply, planning permission should be granted unless any adverse effects of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework as a whole.
99. The totality of the benefits, even with the significant weight to be attached to affordable housing, would carry the penalty of a considerable number of additional houses which would not contribute to the immediate 5-year supply. Overall, I consider that the proposal would be in serious tension with the recently adopted CELPS, and with the development plan as a whole.

The resultant conflict would, by itself, significantly and demonstrably outweigh the benefits of the proposed development. It follows that the proposal would not be sustainable development as defined in the Framework.

100. In reaching this conclusion, I have had regard to all other matters raised, including the case made by the Rule 6 Party and the representations of other interested persons. These include:- the primacy of the CELPS; spatial planning and facilities in and around Alsager; the deliverability of the site and the relationship with the adjoining Phase One site; loss of countryside and ecological impacts; highway problems; drainage; flood mitigation; conflict with earlier requirements for the restoration of the quarry; and adverse impacts from proximity to the M6 motorway. However, I have found nothing of additional materiality to add to my reasons for dismissing the appeal when considered against the identified main issues.

*David MH Rose*

Inspector

## **APPEARANCES**

### **FOR THE LOCAL PLANNING AUTHORITY:**

Reuben Taylor QC	Instructed by: Head of Legal Services
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#### **He called**

Sophie Williams BSc (Hons), MAURD, MRTPI	Senior Planning Policy Officer
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Kevin Foster MSc, DipTP	Principal Planning Officer Development Management
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### **FOR THE APPELLANT:**

Paul Tucker QC and Freddie Humpreys of Counsel	Instructed by: Alan S Thornley BA, MCD, MRTPI Director Civitas Planning Limited
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#### **They called**

Benjamin Pycroft BA (Hons), Dip TP, MRTPI	Associate Director Emery Planning
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Shaun Taylor BA (Hons), MCD, MRTPI	Director SATPLAN LTD
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### **FOR RESIDENTS' REPRESENTATION AT WHITE MOSS QUARRY MEETINGS (RULE 6 PARTY):**

Sylvia Dyke	Local resident
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### **INTERESTED PERSONS:**

Councillor Philip Williams	Alsager Town Council
Councillor John Hammond	Cheshire East Councillor – Haslington Ward
Councillor Derek Hough	Cheshire East Councillor – Alsager Ward

## DOCUMENTS SUBMITTED DURING THE INQUIRY

INQ 1	Statement of Common Ground (Highways) – 13 July 2017
INQ 2	Statement of Common Ground (Housing Land Supply) – 1 August 2017
INQ 3	Statement of Common Ground (Ecology) – 7 August 2017
INQ 4	Statement of Common Ground (General) – 8 August 2017
INQ 5	Statement – Councillor John Hammond
INQ 6	Statement – Councillor Derek Hough
INQ 7	Press Release – Air Quality Monitoring
INQ 8	Statement of Common Ground (Housing Land Supply) – September 2017
INQ 9	Letter from appellant re phasing – 13 September 2017
INQ 10	Letter from Persimmon re phasing – 13 September 2017
INQ 11	Opening submissions on behalf of the Appellant
INQ 12	Opening submissions on behalf of the Local Planning Authority
INQ 13	Community Infrastructure Levy Regulations 2010 Compliance Statement
INQ 14	Final Notes for White Moss Appeal (Councillor Derek Hough)
INQ 15	Policy Extracts from Cheshire East Local Plan
INQ 16	Homework items requested by the Inspector during housing supply round table discussion
INQ 17	List of draft conditions
INQ 18	Planning Obligation by Deed of Agreement under Section 106 of the TCPA Act 1990 (Dated 15 September 2017)
INQ 19	Electronic link to Cheshire East Local Plan
INQ 20	Closing Statement – Sylvia Dyke
INQ 21	Closing Submissions on behalf of the Local Planning Authority & Perry v Hackney [2014] EWHC 3499 (Admin)
INQ 22	Closing submissions on behalf of the Appellant & updated table following housing supply round table discussion